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March 10, 2006

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Via First Class Mail and Electronic Filing

RE: **Comments on Draft Staff Analysis**
Mandate Reimbursement Process, 05-RL-4204-02
Grant Joint Union High School District, Interested Party

Dear Paula:

On February 24, 2006, your office issued its draft staff analysis on the reconsideration of the Mandate Reimbursement Process ("MRP") claim as ordered by the Legislature. In the reconsideration, your staff makes two findings: (1) Statutes of 1975, chapter 486 was repealed by Statutes of 1986, chapter 879; and (2) Government Code section 17556, subdivision (f) precludes the Commission from finding costs mandated by the state for Statutes of 1984, chapter 1459. The following comments are in response to the second finding.

Commission Staff's Conclusion Fails to Strictly Construe Article XIII B, Section 6, is not Supported by the Plain Meaning Rule, and Fails to Meet the Intent Behind the Enactment of Proposition 4.

The draft staff analysis provides that the Mandate Reimbursement Process does not impose a reimbursable state-mandated program upon local agencies and school districts. Your staff bases the conclusion that the MRP program does not impose a reimbursable-state mandate on the recently amended Government Code section 17556, subdivision (f) which states:

> "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [¶] . . . [¶]
>
> "(f) The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statue or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters."

As stated on page 9 of the analysis staff finds that "this section applies to Statutes 1986, chapter 1459; and thus, it does not impose 'costs mandated by the state' within the meaning of Government Code section 17556." The draft staff analysis goes on to state:

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> "Government Code section 17500 et seq. [. . .] was enacted to implement article XIII B, section 6. Government Code section 17500 expressly states that the legislative intent 'in enacting this part [is] to provide for the implementation of Section 6 of Article XIII B of the California Constitution.' Thus, Statutes 1984, chapter 1459 meets the standard of section 17556, subdivision (f), in that it is 'necessary to implement [and] reasonably within the scope of' article XIII B, section 6."[1]

The draft staff analysis includes this discussion of legislative intent regarding Government Code 17500 without strictly construing article XIII B, section 6. Further, no discussion is made of the *voters'* intent when Proposition 4 was passed. The more important issue in determining whether the Government Code section 17556, subdivision (f) exclusion applies is to what extent it fits within a strict interpretation of article XIII B, section 6 and what the voters intended to impose upon the state and school districts when they passed Proposition 4. Only then can the Commission make a determination related to whether Government Code section 17500 truly is "necessary to implement [and is] reasonably within the scope of" article XII B, section 6.

Overview and History of Proposition 4

Modern spending limits in California began in 1979 with the passage of Proposition 4 (enacting Article XIII B of the California Constitution). Also called the Gann Initiative after its chief sponsor, Paul Gann, Proposition 4 places an appropriations limit on most spending from tax proceeds. The limit for each year is equal to the prior year's spending with upward adjustments allowed for changes in population and the cost of living. When the limit is exceeded, Proposition 4 requires the surplus to be returned to the taxpayers within two years. Appropriations in the two-year period can be averaged before becoming subject to the excess revenue provisions of the Gann limit.

Voters approved the Gann limit in a November 1979 special election by a 74% margin. The late 1970s were a time of surplus state revenues in California, and voter exasperation at the inability of the legislature and the governor to agree on a plan to return the surplus to the taxpayers in the form of refunds or property tax relief helped fuel the tax revolt that led first to Proposition 13 and then to Proposition 4. The ballot language included with Proposition 4 provides the insight the Commission needs to determine properly whether the Government Code section 17556, subdivision (f) exclusion should be applied.

The following comes directly from the Legislative Analyst Office summary of Proposition 4 as it relates to article XIII B, section 6:

[1] Draft Staff Analysis at page 10.

"[. . .] Require the state to reimburse local governments for the cost of complying with 'state mandates.' 'State mandates' are requirements imposed on local governments by legislation or executive orders.

"Finally, the initiative would establish a requirement that the state provide funds to reimburse local agencies for the cost of complying with state mandates. The initiative specifies that the Legislature need not provide such reimbursements for mandates enacted or adopted prior to January 1, 1975, but does not require explicitly that reimbursement be provided for mandates enacted or adopted after that date. Legislative Counsel advises us that under this measure the state would only be required to provide reimbursements for costs incurred as a result of mandates enacted or adopted after July 1, 1980."[2]

The following are the arguments in favor of Proposition 4 as presented to the voters:

"The 'Spirit of 13' citizen-sponsored initiative provides permanent constitutional protection for taxpayers from excessive taxation. A 'yes' vote for Proposition 4 will preserve the gains made by Proposition 13.

VERY SIMPLY, this measure:

1) WILL limit state and local government spending.

2) WILL refund or credit excess taxes received by the state to the taxpayer.

3) WILL curb excessive user fees imposed by local government.

4) WILL eliminate government waste by forcing politicians to rethink priorities while spending our tax money.

5) WILL close loopholes government bureaucrats have devised to evade the intent of Proposition 13.

ADDITIONALLY, this measure:

1) ***WILL NOT allow the state government to force programs on local governments without the state paying for them***.

[. . .]

4) WILL NOT allow politicians to make changes (in this law) without voter approval.

[2] The text of Proposition 4, along with the analysis and arguments in favor and against, can be found at http://library.uchastings.edu/cgi-bin/starfinder/0?path=calprop.txt&id=webber&pass=webber&OK=OK.

> ***We need lean, flexible, responsive government***. We need sensible spending controls that will help eliminate waste without sacrificing truly useful programs."[3] (Emphasis added.)

The Conclusion Reached by Your Office Does Not Strictly Construe Article XIII B, Section 6 Nor Does it Adhere to the Plain Meaning Rule.

The conclusion that Statutes 1984, chapter 1459 meets the standard of section 17556, subdivision (f), in that it is "necessary to implement [and] reasonably within the scope of" article XIII B, section 6 fails to strictly construe the Constitution. The Commission on State Mandates has strictly construed section 6 numerous times. The following provides an overview of the standard analysis used by Commission staff when strictly construing section 6 and applying the plain meaning rule.[4]

> "Article XIII B, section 6 of the California Constitution provides that 'whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds.' The Legislature implemented article XIII B, section 6 by enacting Government Code section 17500 et seq. Government Code section 17514 defines 'costs mandated by the state' as 'any increased costs which a local agency or school district is required to incur. . . as a result of any statute . . . which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.'
>
> "The courts have explained that article XIII B, section 6 was specifically intended to prevent the state from forcing programs on local government that require expenditure by local governments of their tax revenues. [Citation omitted.] In this respect, the California Supreme Court and the Courts of Appeal have held that article XIII B, section 6 was not intended to entitle local agencies and school districts to reimbursement for all costs resulting from legislative enactments, but only those costs 'mandated' by a new program or higher level of service imposed upon them by the state.
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> "Thus, even though a school district may incur increased costs as a result of a statute, as alleged by the claimant here, increased costs alone are not determinative of the issue whether the statute imposes a reimbursable state mandated program. Rather, the statute must satisfy all of the elements required by the Constitution and the Government Code.
>
> "The first element is whether the statute 'mandates' local agencies and school districts to do something. The Second District Court of Appeal, in *Long Beach*

[3] *Ibid*.
[4] This analysis was taken from the *Eastview Optional Attendance Area* (99-TC-01) statement of decision.

Unified School District v. State of California, has interpreted the word 'mandates' as it is used in article XIII B, section 6 to mean 'orders' or commands. [Citation omitted.] The question whether a test claim statute is a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution is purely a question of law. [Citation omitted.] ***Thus, based on the principles outlined below, when making the determination on this issue, the Commission, like the court, is bound by the rules of statutory construction***. (Emphasis added.)

"The Legislature created the Commission as a quasi-judicial agency to hear and decide claims that a local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by article XIII B, section 6 of the California Constitution. [Citation omitted.] The courts have also recognized that the interpretation of the statutory language of a test claim statute is solely a judicial function. [Citation omitted.] If a local governmental entity or state agency believes the Commission's decision is wrong, they may commence a proceeding in the courts under Government Code section 17559 to set aside the Commission's decision. [Citation omitted.] The court then independently reviews the Commission's legal conclusions about the meaning and effect of constitutional and statutory provisions. [Citation omitted.]

"The final responsibility for the interpretation of a test claim statute rests with the court. ***Accordingly, under these principles, the Commission is bound by the rules of statutory construction.*** (Emphasis added.)

"Pursuant to the rules of statutory construction, courts and administrative agencies are required, when the statutory language is plain, to enforce the statute according to its terms. The California Supreme Court explained that:

"In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citation omitted.]

"In this regard, courts and administrative agencies may not disregard or enlarge the plain provisions of a statute, nor may they go beyond the meaning of the words used when the words are clear and unambiguous. Thus, courts and administrative agencies are prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute. [Citation omitted.] This prohibition is based on the fact that the California Constitution vests the Legislature, and not the Commission, with

> policymaking authority. As a result, the Commission has been instructed by the courts to construe the meaning and effect of statutes analyzed under article XIII B, section 6 strictly:
>
> "***A strict construction of section 6 is in keeping with the rules of constitutional interpretation, which require that constitutional limitations and restrictions on legislative power 'are to be construed strictly, and are not to be extended to include matters not covered by the language used***.' [Citations omitted.][. . .]"

Application of the foregoing analysis to the MRP reconsideration leads one to a different conclusion than the one reached by your staff. Article XIII B, section 6 provides:

> "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, ***the State shall provide a subvention of funds*** to reimburse that local government for the costs of the program or increased level or service [. . .]" (Emphasis added.)

Courts have held that a shift in costs from the state to local government is in violation of article XIII B, section 6. In *County of Los Angeles v. State of California,* the California Supreme Court held:

> "Section 6 was designed to prevent the state from forcing programs on local government. [T]he intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. [. . .] The goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxation and government spending. [Citation omitted.] Section 6 had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new programs."[5]

Article XIII B, section 6, as well as the analysis and arguments included for Proposition 4, all have one thing in common: They address the activities the ***state*** must perform as it relates to mandates and the subvention of funds. The guiding principle of article XIII B, section 6 and Proposition 4 is that the state must pay for the programs it imposes on local government. Both article XIII B, section 6 and Proposition 4 ***are silent as to any activities that local government must perform in order to receive a subvention of funds***.

[5] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46 , 56-57.

The fact that both article XIII B, section 6 and Proposition 4 speak of only the state's responsibility to provide a subvention of funds for mandated programs means that only those sections of Government Code section 17500 et seq. that are "necessary to implement [and are] reasonably within the scope of" article XIII B, section 6 are those sections that impose activities upon the state – not local government. To hold otherwise fails to strictly construe article XIII B, section 6 and is in direct violation of the plain meaning rule as consistently applied by the Commission on State Mandates.

Moreover, Government Code section 17556, subdivision (f) is inapplicable here as those portions of the mandate reimbursement process that directly impose activities upon local government are not "necessary to implement [and are not] reasonably within the scope of" article XIII B, section 6. Through the approval and payment of claims under the MRP claim the Commission and the state recognize that the state has shifted its financial and administrative burden for providing a subvention of funds under a plain reading of article XIII B, section 6 onto local government.

The California Supreme Court is very clear in its statement as to the design of article XIII B, section 6. Any shift of costs from the state to local government violates article XIII B, section 6 requiring a subvention of funds. Those portions of Government Code section 17500 et seq. that impose activities upon local government represent a shift of costs and activities from the state. Historically, the MRP claim recognized that the activities related with annual claim filing and activities tied to claim approval via the Commission process are reimbursable as the state has shifted its responsibility to provide a subvention of funds to local government. The administrative burden to provide a subvention of funds rests squarely on the state and any activities local government must perform to ensure such payments are made are clearly reimbursable.

The draft staff analysis is in error that Government Code section 17556, subdivision (f) is applicable here based upon the arguments in favor of Proposition 4. As outlined above, one of the central themes of Proposition 4 is that Proposition 4 "***WILL NOT allow the state government to force programs on local governments without the state paying for them***." (Emphasis added.) Staff's conclusion that the MRP claim is "necessary to implement [and is] reasonably within the scope of" article XII B, section 6 is in error in light of voters' intent.

Recall that Proposition 4 was approved by over 74% of the voters in California. Clearly, Californians were concerned about the state's ability to foist additional, costly programs upon local government without providing the necessary funding to carry out those programs. Establishing a program, MRP, by which local government must expend additional time and resources to permit the state to meet its clear obligation under the California Constitution is exactly the type of program the vast majority of California voters intended to avoid. By saying the MRP claim is "necessary to implement [and is] reasonably within the scope of" article XII B, section 6 ignores the intent behind Proposition 4.

While the Legislature has the authority to approve implementing legislation for Proposition 4, such legislation must be limited to what the voters intended and a strict interpretation of article XIII B, section 6. Clearly, the voters intended, and article XIII B, section 6 provides, that the ***state***, not local government, ***be pledged with the duty to provide a subvention of funds for new programs or higher levels of service***. Those portions of Government Code section 17500 et seq. that impose upon local government any part of the state's burden to provide a subvention of funds is in excess of the voters mandate to the state and article XIII B, section 6.

Therefore, any section of Government Code section 17500 et seq. that imposes upon local government any part of the state's burden to provide a subvention of funds is a new program or higher level of service and requires payment by the state. Government Code section 17556, subdivision (f) is inapplicable here as the voters intended that only the state be charged with providing a subvention of funds and any shift of activities or costs upon local government will be paid for by the state. No amount of Legislative action can undo this basic tenet of Proposition 4.

Finally, holding that the MRP claim is not "necessary to implement [and is not] reasonably within the scope of" article XIII B, section 6 does not call into question the Legislature's authority to provide for implementing legislation. As the Commission is bound by the law as outlined by the California Supreme Court and the rules of strict interpretation of constitutional provisions and the application of the plain meaning rule, any legislative enactments imposing activities upon local government related to the state's responsibility to provide subvention of funds are mandates. The Legislature is well within its power to establish a quasi-judicial process by which local government and school districts must adhere to seek new mandate determinations and file for reimbursement with the state. However, doing so oversteps the mandate outlined in article XIII B, section 6 and is clearly outside the voters' intent when they enacted Proposition 4. As such, the state must pay for shifting is administrative burden related to local government and school district participation in the Commission process and annual claim filing.

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Based on the foregoing, we respectfully request that the final staff analysis conclude that Government Code section 17556, subdivision (f) does not preclude a finding that the MRP claim imposes costs mandated by the state upon local government and school districts and that the MRP claim does in fact impose a reimbursable state-mandate program.

Sincerely,

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For: Grant Joint Union High School District